

TTAB

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Dorie Choderker
Name: Dorie G. Choderker

12-24-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application S.N. 75/192,631 in Class 41
Published September 29, 1998

In the Matter of Application S.N. 75/192,629 in Class 35
Published July 27, 1999

VIACOM INTERNATIONAL INC.,

Opposer,

-against-

MINATAUR PRODUCTIONS, INC.,

Applicant.

Opposition No. 91-112,850
(Consolidated with Opp. No. 91-112,851)

In the Matter of Registration No. 2,317,477 in Class 41
Registered: February 15, 2000

VIACOM INTERNATIONAL INC.,

Petitioner,

-against-

MINATAUR PRODUCTIONS, INC.,

Registrant.

Cancellation No. 92-41,048

TRADEMARK TRIAL AND
APPEAL BOARD
02 DEC 30 AM 5:30

**MINATAUR'S OPPOSITION TO VIACOM'S MOTION TO CONSOLIDATE
PROCEEDINGS**

**I
INTRODUCTION**

Petitioner/Opposer Viacom International Inc. ("Viacom") opposed Applicant/Registrant Minataur Productions, Inc.'s ("Minataur") service mark application for CHANNEL M in Class 35 (Opposition No. 112,850) and Minataur's service mark application for CHANNEL M in Class 41 (Opposition No. 112, 851). Minataur consented to consolidate these two oppositions. On November 22, 2002, the Board ordered the consolidation of Opposition No. 112,850 and Opposition No. 112, 851 ("Consolidated Oppositions"). On September 3, 2002, Viacom filed a Petition to Cancel Minataur Registration No. 2,317,477 for the mark CHANNEL M in Class 41, Cancellation No. 41,048 ("Cancellation Proceeding").

Viacom is seeking the consolidation of the Cancellation Proceeding with the Consolidated Oppositions. Consolidation of the Cancellation Proceeding with the Consolidated Oppositions is not warranted.

**II

THE CONSOLIDATED OPPOSITIONS AND CANCELLATION PROCEEDING
SHOULD NOT BE CONSOLIDATED
BECAUSE THE ISSUES DIFFER**

Proceedings should not be consolidated where the issues raised in the separate

proceedings are different. See *Izod, Ltd. v. La Chemise Lacoste*, 178 U.S.P.Q. 440 (T.T.A.B. 1973).

The ground for Oppositions Nos. 112, 850 and 112, 851 is identical. In its notices of oppositions, Viacom claimed that Minataur's CHANNEL M mark is likely to cause confusion with its MTV: MUSIC TELEVISION (block letters and stylized) and MTV marks.

In the Cancellation Proceeding, in addition to claiming that Minataur's CHANNEL M mark is likely to cause confusion with its MTV: MUSIC TELEVISION (block letters and stylized) and MTM marks, Viacom alleges that Minataur has abandoned its CHANNEL M mark for the services covered by Registration No. 2,317,477. Paragraph 20, Viacom's Petition to Cancel. Abandonment is not at issue in the Consolidated Oppositions.

The application for CHANNEL M in Class 41 covers "production and distribution of motion pictures; and television scheduling (programming)". The services covered by Minataur's registration for CHANNEL M are "production and distribution of radio and television programs; and television scheduling".

The services covered by Minataur's opposed application Serial No. 75/192,631 for CHANNEL M in Class 41 and the services covered by Registration No. 2,317,477 for

CHANNEL M in Class 41, which is the subject of the Cancellation Proceeding are similar. Thus, it would be prejudicial to Minataur to have the issue of abandonment tried in a consolidated proceeding where Viacom has not asserted abandonment as a ground for opposition in the Consolidated Oppositions. It is noted that Viacom has not moved to amend its notices of oppositions in the Consolidated Oppositions to include claims for abandonment.

Accordingly, the Board should deny Viacom's motion to consolidate because the issues raised in the Consolidated Oppositions and the Cancellation Proceeding are different and Minataur would be prejudiced by consolidation.

II

THE PROCEEDINGS SHOULD NOT BE CONSOLIDATED BECAUSE ANSWERS HAVE NOT BEEN FILED IN ALL PROCEEDINGS

"Generally, the Board will not consider a motion to consolidate until an answer has been filed (i.e., until issue has been joined) in each case sought to be consolidated." TBMP §511.

Minataur has not yet filed answers in Opposition No. 112, 850 or in the Cancellation Proceeding. Accordingly, the proceedings should not be consolidated.

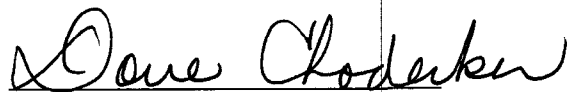
III

CONCLUSION

For the foregoing reasons, Viacom's motion to consolidate the Cancellation Proceeding with the Consolidated Oppositions should be denied.

Respectfully submitted,

Dated: 12/20/02



Dorie G. Choderker
Russ, August & Kabat
12424 Wilshire Boulevard
Suite 1200
Los Angeles, CA 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991
E-mail: dchoderker@raklaw.com

Attorney for Registrant
Minataur Productions, Inc.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 20, 2002, a copy of the foregoing MINATAUR'S OPPOSITION TO VIACOM'S MOTION TO CONSOLIDATE PROCEEDINGS is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to:

Michael Chiapetta, Esq.
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

The same being the attorneys for Petitioner/Opposer.

Dated: December 20, 2002



Dorie G. Choderker